IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMONS FOR JUDGMENT NO.92 OF 2007
IN
SUMMARY SUIT NO.2986 OF 2006

Vital Diagnostics (P) Ltd. ..Plaintiff.
Vs.
Premier Refrigeration Ltd. ..Defendant.

....

Mr. Yashpal Jain for the Plaintiff.
None for the Defendant.

....

CORAM: **DR. D.Y. CHANDRACHUD, J.**

9th April, 2007.

P.C. :

1. The Plaintiff entered into a leave and licence agreement with the Defendant in respect of certain commercial premises comprising of Gala No.C-116, Bonanza Industrial Estate, C. Ashok Road, Kandivli (East), Mumbai 400 101. The agreement dated 30th December, 2003 was to remain in force for a period of 11 months, in pursuance whereof the Plaintiff deposited an amount of Rs.1,50,000/- as and by way of a refundable security deposit. On 9th April, 2004 the

Plaintiff intimated to the Defendant that possession of the premises was being surrendered on 29th April, 2004 and called for the return of the security deposit. The Defendant issued two cheques dated 17th and 21st June, 2004 each in the amount of Rs.75,000/- which were dishonoured by the Defendant's bankers on presentation. Despite a notice of demand dated 12th June, 2006 the Defendant has failed and neglected to repay the amount of the security deposit. The Plaintiff has stated that possession of the premises has been surrendered to the Defendant.

2. The Defendant has been served with the writ of summons and has entered appearance through an advocate. An affidavit of service of the Summons for Judgment has been tendered on the record. There is no reply to the Summons for Judgment and the Defendant has not made out any defence to the claim in the suit that would entitle the Defendant to leave to defend. The claim of the Plaintiff falls within the purview of Order 37 of the Code of Civil Procedure, 1908. In any event, the Plaintiff would be entitled to a

decree upon the failure of the Defendant to set out a defence entitling him to leave to defend. The suit shall accordingly stand decreed in terms of prayer clause (a) together with the costs of the suit.